Opinion
No. 1224

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

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WASHINGTON SHERATON CORPORATION, et al.,	:	FILED
Petitioners,	:	Tax Docket No.
v.	:	
DISTRICT OF COLUMBIA,	:	3315-83
Respondent.	:	

E R R A T U M

The first sentence under Section III on page four of the Court's Order dated November 2, 1984, should read as follows: "The District of Columbia Code imposes on each deed at the time it is submitted for recordation a tax at the rate of one per centum of the consideration for such deed. D.C. Code 1981 Section 45-923."

JUDGE IRALINE G. BARNES

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

WASHINGTON SHERATON CORPORATION, et al., Petitioners,	
v.	Tax Docket No. 3315-83
DISTRICT OF COLUMBIA, Respondent.	

O R D E R

Upon consideration of the Petitioners' Motion for Summary Judgment, Petitioners' Statement of Undisputed Material Facts and the Respondent's response thereto, Respondent's opposition to the motion, the parties' supporting points and authorities and the oral argument of their attorneys, it is this 2nd Day of November, 1984,

ORDERED that Petitioners' motion shall be, and hereby is, granted; and it is

FURTHER ORDERED AND DECLARED that the subject assessment by Respondent of the deed recordation tax in controversy (pertaining to the alleged transfer in 1979 of an interest in the improved real property designated as Lot 32 in Square 2132) is invalid and unlawful; and it is

FURTHER ORDERED that the Respondent shall refund to Petitioners (a) the deed recordation tax of $196,250, with accrued interest thereon of $50,288.96 and the penalty amount of $49,062.50 (a total principal amount of $295,601.46) paid by Petitioners in respect of the assessment, plus (b) statutory interest pursuant to D.C. Code §47-3310(c) (1981 ed.), at the rate of 6 percent per annum from the date the overpayment was paid on May 17, 1983 until the date of refund.

JUDGE TRALINE G. BARNES

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PERIOR COURT OF THE DISTRICT COLUMBIA
Tax Division

WASHINGTON SHERATON CORPORATION, et al.,	:	
Petitioners,	:	
v.	:	Tax Docket No. 3315-83
DISTRICT OF COLUMBIA,	:	
Respondent.	:	

OPINION

This matter came before the Court on May 10, 1984, on cross-motions for summary judgment. The taxes in controversy are District of Columbia deed recordation taxes assessed against the petitioners pursuant to D.C. Code 1981 Section 45-923 in the amount of $295,601.46. The assessment results from the District's determination that the petitioners executed a document which conveyed a legal interest in the property to the Petitioner Joint Venture. The District determined that the recordation of that document was a taxable event to which liability for the recordation tax attached. The petitioners' administrative claim for a refund was denied and the petitioners paid the disputed taxes and statutory interest under protest on May 17, 1983.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code Section 11-1201 and 45-934.

I.

The petitioners, Washington Sheraton Corporation and John Hancock Mutual Life, claim that the subject assessment of a deed recordation tax by Respondent District of Columbia was invalid and unlawful because no documents effecting a transfer of real property were ever submitted for recordation, nor were any documents required to be submitted. The District

contends that petitioners did execute several documents including a joint venture agreement, a nominee agreement, and a contribution agreement which effectively transferred legal title of real property from one distinct entity to another. Thus, the issue before the Court is whether the District correctly determined that documents executed by petitioners effectively transferred legal title of real property from one entity to another so as to be considered an event to which liability for a recordation tax attached. Upon careful consideration of the pleadings and records of the case, and the arguments advanced by counsel, the Court concludes that Washington Sheraton Corporation and John Hancock Mutual Life did not execute documents which effected a transfer of legal title triggering the imposition of a recordation tax fee. Additionally, the Court finds, that petitioners did not have a duty to record documents submitted in relation to the transfer of title.

II.

The material facts of this case are not in dispute and may be briefly summarized:

1. Petitioners John Hancock Mutual Life Insurance Company and Washington Sheraton Corporation are the sole principals of Sheraton Washington Joint Venture, a District of Columbia single purpose general partnership. The venture was created on or about September 27, 1979.

2. On or about September 27, 1979, petitioners executed a certain Joint Venture Agreement (JVA). Pursuant to Section 1.2 of the Joint Venture Agreement, (JVA), the sole purposes of the Venture were "(a) to acquire the property described in Exhibit A" (the subject property) and "(b) to own, complete the construction of, maintain, renovate, lease, manage

and operate the property and the improvements as an investment . . . ." The hotel property is located in the District of Columbia at 2660 Woodley Road, N.W., and includes the improved real property designated as Lot 32 in Square 2131 known as the Sheraton Washington Hotel (the "Hotel"). Article V of the Joint Venture Agreement authorized the Venture to "(a) acquire real or personal property or any interest therein" and "(c) borrow money and as security therefore mortgage all or any part of its property . . . ." and "(d) sell, assign or convey all or any part of its property". Article VI, Section 6.1 of the Joint Venture Agreement provides that "any real or personal property owned by the Joint Venture Agreement may be kept in the name of the Joint Venture or in the name of either Joint Venture or any nominee, all as the Joint Venturers may from time to time elect."

3. On or about September 27, 1979, petitioners executed a certain Contribution Agreement (CA). In the CA, Petitioner Sheraton states that it owns the subject property and that for proper consideration, it contributed the subject property to the venture. The value of petitioner Sheraton's contribution, including real and personal property contract rights with respect to construction and renovations was agreed to be $67,880,695.00.

4. On or about September 27, 1979, petitioners executed a certain Nominee Agreement (NA). In the NA, the declarant, Washington Sheraton Corporation, declared that it holds title as agent and nominee for the venture and that it will not encumber or otherwise adversely affect that title without the written consent of the venture. Petitioners thereafter caused the NA to be filed with the Recorder of Deeds.

5. The Nominee Agreement is the sole document related to the Joint Venture's interest in the subject property which has been recorded. The land records of the District of Columbia continue to reflect that Sheraton is the sole owner which holds legal title to the hotel.

6. By letter dated January 13, 1983, the District of Columbia Department of Finance and Revenue notified the Joint Venture of the District's determination that it owed a recordation tax in the amount of $196,250.00 plus penalties and interest. The District's determination was predicated upon an alleged transfer of legal title by Sheraton to the Joint Venture. As a result of the Joint Venture's timely challenge to the assessment, a hearing was held by the Department of Finance and Revenue on March 10, 1983. By letter dated April 15, 1983, the Department of Finance and Revenue issued its final determination that the tax was due, and assessed the amount in controversy.

7. The total amount assessed, is a tax in the amount of $196,150.00 plus interest of $52,200.96, and a penalty of $49,062.50.

8. On or about May 17, 1983, petitioners paid the total assessment amount of $295,601.46 "under protest" and demanded a refund with accrued interest. The District refused the demand and on October 14, 1983, petitioners timely filed this appeal pursuant to D.C. Code 1981 Section 45-934. Petitioners seek a refund of the total amount paid with interest accrued thereon.

III.

The District of Columbia Code imposes on each deed at the time it is submitted for recordation a tax at the rate of one-half of one per centum of the consideration for such deed. D.C. Code 1981 Section 45-923. The District of

Columbia Court of Appeals has interpreted the language of Section 45-923 to mean that the exact event for which a tax is imposed is the recordation of a deed effecting a complete change in the legal ownership of the property. Cowan v. District of Columbia, 433 A.2d 1075 (D.C. 1983), quoting Columbia Realty Venture v. District of Columbia, 433 A.2d 1075 (D.C. 1983).

Petitioners argued that no document pertaining to ownership of the subject property has been recorded except the Nominee Agreement and, further, that because the Nominee Agreement did not effect any change in the legal ownership of the property, the event for which tax is properly imposed has not occurred. The Respondent argued that petitioners executed several documents including the JVA, NA, and CA which had the effect of transferring legal title to the subject property from one entity to another.

The Nominee Agreement in pertinent part, provides:

> 2. Declarant [i.e., Sheraton] hereby declares that it holds title to the Property as agent and nominee for Sheraton Washington Joint Venture . . .
>
> 3. Declarant hereby acknowledges and agrees that it will not, without in each instance first obtaining the written consent of the Joint Venture . . . voluntarily grant, create or assume any lien, tax, mortgage . . . or restriction on or affecting the [Hotel] . . . .
>
> 4. Declarant, acting pursuant to the direction of the Joint Venture and in accordance with Section 3 above, shall have the power to sell, lease, mortgage . . . and take any other action with respect to, or affecting title to the [Hotel] . . . .

The term deed is defined by the Recordation Tax Act as

> . . . . any document, instrument, or writing, regardless of where made, executed, or delivered whereby any real property in the District of Columbia, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

D.C. Code Section 45-721(c).

Based on a reading of the NA, it is clear that there is an absence of language of conveyance or transfer in the document. The NA, on its face, merely recites the manner in which Petitioner Sheraton holds title to the subject property as well as the accompanying rights and restrictions thereto. The purpose of a deed is to pass title to land rather than to express the terms of an underlying contract of sale. Hall v. Solomon, 61 Conn. 476, 23 A. 876 (1892). Even though the requirement of the statute of frauds that an agreement for the sale of land shall be in writing is complied with, such writing will not, of itself transfer [legal] title to the land. Id. at 877.

While the NA recites that Petitioner Sheraton holds title to the subject property as agent and nominee for the Joint Venture, legal title to the subject property has been and currently is held by Petitioner Sheraton. Where property belongs to the firm, but record title is in one or more partners, the firm has only equitable title. Crane and Bromberg, Section 37(d) (1968). This proposition is supported by D.C. v. Riggs National Bank, 335 A.2d 238 (D.C. 1975), which applies the same principle pursuant to the common law of the District of Columbia. That case holds, inter alia, that if a deed is in the name of a single partner, that partner holds legal title which is passed upon the partner's death like any other realty owned by that person, subject to a trust for satisfaction of partnership obligations. Id. at 241.*/

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*/ See also, Williams v. Dowell, 96 A.2d 404 (1953) (where real property is acquired in course of partnership with partnership funds, but conveyance is to partners as individuals, they hold property in resulting trust for benefit of partnership).

Based on the language of the pertinent agreement, as well as the fact that record title is in the name of Petitioner Sheraton, it is clear that legal title remains with Petitioner Sheraton. Sheraton was vested with the power to sell, lease, or grant the property, but its power was limited in part by the written consent of the Joint Venture. It nevertheless retained the legal interest. As shown by the case law and cited treatises, Petitioner Sheraton's retention of legal title resulted in equitable title to the subject property being vested in the Joint Venture. Thus the Court finds that the NA executed by petitioners is not a deed which effects a conveyance of legal title to the subject property. The document is void of language to effect such a transfer.

Additionally, Respondent makes reference to a letter dated September 27, 1969, from Washington Sheraton Vice President Young to counsel for John Hancock. The letter stated that a deed for the subject property had been executed from the Petitioner Sheraton to the Joint Venture. It is Respondent's contention that the executed deed passed legal title to the subject property from Petitioner Sheraton to Petitioner Joint Venture. That deed was being held in escrow pending resolution of a title insurance question. The letter contemplated that the deed would be recorded should the title insurance question not be resolved. Because title insurance to the property was obtained in the names of "Sheraton Washington Joint Venture, John Hancock Mutual Life Insurance Company, and Washington Sheraton Corporation, Nominee, as their interests may appear", that condition never materialized. Accordingly, the deed was never delivered to the Joint Venture.

It is an established principle of law that delivery and acceptance are necessary requirements to the existence of a valid deed. The act of delivery is essential to the existence of any deed. Atlas Portland Cement Co. v. Fox, 49 App. D.C. 292, F 444 (1920), Glanakos v. Magiros, 234 Md. 14, 197 A.2d 897 (1964).

Although manual delivery may not be necessary, there must be some "words or acts showing an intention that the deed shall be complete and operative. Schooler v. Schooler, 84 U.S. App. D.C. 147 (1948). By virtue of the fact that the deed was being held in escrow pending resolution of a title insurance issue, there was lacking an intent on Petitioner Sheraton's part that the deed was to be complete and operative. Case law further establishes the principle that in order for a deed to be operative, there must be an intention to create a present interest. Noice v. Toyman, 222 Md. 426, 160 A.2d 916 (1960). The placement of deed in escrow is not deemed a delivery because the grantor is lacking an unconditional present intent to pass title in the property. Smith v. Wilson, 171 F.2d 814 (D.C. Cir. 1948). Thus, respondent's contention that the executed deed passed legal title to the subject property to Petitioner Joint Venture is simply not substantiated. Moreover, legal title to date, is held by Petitioner Sheraton.

Having found that petitioner's retention of legal title resulted in equitable title to the subject property being vested in the Joint Venture, this Court must now consider (1) which document effected the conveyance of equitable title to Petitioner Joint Venture and (2) whether a duty to record that document was imposed on petitioners pursuant to any operative statutory provision of the District of Columbia Code.

Petitioners contend that equitable rights were created, not transferred in the Joint Venture. Such rights, petitioners argue, were created through the execution of the Joint Venture Agreement and arose by operation of law as a result of the venture's formation. Respondent contends that the operative document is the recorded Nominee Agreement which conveyed equitable title of the subject property to the Joint Venture.

D.C. Code 1981 Section 47-1431(b) provides in pertinent part:

> Whenever any portion of an instrument, which conveys or provides for the conveyance of equitable title to a real property, is transferred by or on behalf of a party to such instrument to a third party, then the party so transferring shall record [within 30 days] a fully acknowledged copy of said instrument . . . (emphasis supplied)

The term equitable title is defined elsewhere in the act as:

> . . . . a right in a party to have the legal title to . . . . real property . . . transferred to such party. The term shall also include any right to receive equitable title by means of an option to purchase or otherwise. D.C. Code 1981 Section 47-1401 (10)

The JVA sets forth the purpose of the venture. Such purposes include, inter alia, "to acquire the [subject property]". Petitioner's argument that the JVA created the equitable rights now held by the venture agreement is supported by the fact that no other documents relevant to the petitioner's interest in the hotel make reference to the venture's acquisition of the subject property.

As recited earlier, D.C. Code Section 47-1431(b), requires recordation of an instrument which has effected the conveyance or provided for the conveyance of an equitable interest. This requirement is mandatory in nature and failure to record is subject to penalty pursuant to D.C. Code 1981, Section 47-1433.